

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 205

Decided: February 22, 2002

In CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89),¹ Environmental Condition No. 11 of Appendix Q² requires Applicants (including CR, which administers the CSX/NS Shared Assets Areas), with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that the specific requirements of this condition “shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.” Environmental Condition No. 11 requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. The Board granted, at the request of CSX and CR, an extension of the compliance date to August 22, 2001, and then to February 22, 2002. See Decision No. 166, served on August 22, 2000, and Decision No. 195, served on August 21, 2001, respectively. By letter received at the Board on February 19, 2002, CSX, on behalf of CSX and CR, has requested a further 1-year extension to complete compliance with Environmental Condition No. 11, until February 22, 2003.

CSX states that it has worked diligently to implement Environmental Condition No. 11, and has submitted to the Board 31 Negotiated Agreements under Environmental Condition No. 11 that have been added to Environmental Condition No. 51 of Appendix Q of Merger Dec. No. 89. According to CSX, these Negotiated Agreements cover all of the eligible receptors

¹ In Merger Dec. No. 89, the Board approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (CR), and the division of their assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX, NS, and CR are referred to collectively as Applicants for purposes of this decision.

² 3 S.T.B. at 588-90.

identified in Environmental Condition No. 11 that are located in Indiana and Ohio. CSX states that it also has entered into Negotiated Agreements with nine responsible local governments in Pennsylvania, and that only Elizabeth Township and Rostraver Township informed CSX that they wished CSX to contact individual property owners. According to CSX, it contacted the individual property owners as requested, and, to date, it has entered into agreements covering 24 of the 28 structures eligible for noise mitigation in these townships. CSX advises that it has not yet satisfied Environmental Condition No. 11 with respect to only 4 structures on the CSX system, and thus has satisfied Environmental Condition No. 11 with respect to over 99% of the structures eligible for noise mitigation under this condition.

CSX also advises that CR has worked diligently to comply with Environmental Condition No. 11 with respect to eligible receptors in the Detroit Shared Assets Area. According to CSX, CR has entered into Negotiated Agreements with two responsible local governments in the Detroit Shared Assets Area. These Negotiated Agreements have been submitted to the Board and have been added to Environmental Condition No. 51. CSX further states that Allen Park, Ash Township, and Lincoln Park, MI, informed CR that they wished CR to contact individual property owners; that CR has contacted them; and that, to date, CR has entered into agreements covering 5 of the 10 eligible structures and is in the process of finalizing one additional settlement. CSX advises that CR has not yet satisfied Environmental Condition No. 11 with respect to only 4 structures in the Detroit Shared Assets Area.

CSX states that, during the past 6 months, both CSX and CR have entered into a number of agreements with individual property owners. CSX states that it has worked with CR, NS, and noise consultants to develop a noise mitigation program protocol (protocol). CSX appears to indicate that the protocol could be used for compliance by CSX, NS, and CR of noise mitigation requirements under Environmental Condition No. 11.³

In light of the representations made by CSX indicating substantial progress in compliance with Environmental Condition No. 11, and development of the protocol to complete compliance with Environmental Condition No. 11 expeditiously, the request for a 1-year extension to February 22, 2003, is reasonable and will be granted. The Board expects parties to complete their negotiations and conclude this process within the year so that no further extensions would be necessary.

³ CSX states that the protocol sets forth the railroads' plan for implementing Environmental Condition No. 11 so that all affected parties would understand the railroads' intended process for how the noise mitigation should proceed. CSX states that the protocol contemplates that each property owner will be offered the choice of a monetary settlement agreement or a structural insulation agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compliance deadline for CSX and CR in Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 is extended 1 year until February 22, 2003.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary